IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6345 OF 2006

Laxman Ganpati Kanse & Ors. .. Petitioners.
Vs.
Vitthal Dhondiram Bobade & Anr. .. Respondents.

Mr.Milind Deshmukh for the petitioners.
Mr.Abhay D.Parab for respondent nos.1 and 2.

CORAM : D.B.BHOSALE, J.
DATED : 11TH OCTOBER, 2006

P.C.:

1. Heard learned counsel for the petitioners and respondent nos.1 and 2.

2. Rule, returnable forthwith. By consent of the parties taken up for final hearing. Mr.Parab, learned counsel waives service for respondent nos.1 and 2.

3. The petitioners have impugned the order dated 9.8.2006 by which their three applications at Exhibits 75, 76 and 78 in probate application no.18 of 2001 have been rejected. Mr.Deshmukh, learned counsel for the petitioners at the outset submits that he has instructions not to press this writ petition against the order rejecting the applications at Exhibits-75 and 76 and prays for liberty to the petitioners to challenge the order on those applications in further proceedings after the suit is disposed of. Mr.Parab, learned counsel for respondent nos.1 and 2 has no

objection for granting such liberty. In the circumstances the writ petition against the order dated 9.8.2006 passed on the applications at Exhibits-75 and 76 is dismissed as not pressed with liberty as prayed for.

4. Insofar as the order passed on the application at Exhibit-78 is concerned, the learned counsel for the parties fairly stated that I need not record reasons for allowing the petition partly. Looking the overall facts and circumstances of the case and in the interest of justice I am inclined to grant one more opportunity to the petitioners to examine their witness and hence I pass the following order:

5. The impugned order rejecting the application at Exhibit-78 is set aside. Consequently the "No evidence" order also stands set aside. The petitioners are allowed to examine their witness within six weeks from the date of receipt of this order failing which the trial Court shall proceed with hearing of the suit and decide the same on merits in accordance with law.

6. With these observations the rule is disposed of. No costs.

(D.B.Bhosale, J.)